

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Nguyen et al.

Confirmation No.: 6318

Serial No.: 09/606,790

Examiner: LaShonda T. Jacobs

Filed: June 28, 2000

Group Art Unit: 2157

For: DEVICES AND METHODS FOR MINIMIZING START UP
DELAY IN TRANSMISSION OF STREAMING MEDIA

Date: February 28, 2007

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

This review is requested for the reason(s) stated on the attached sheet(s). Note: no more than five (5) pages may be provided.

I am the:

- ☐ applicant/inventor
☐ assignee of record of the entire interest
 See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed)
☒ attorney or agent of record
☐ attorney or agent acting under 37 CFR 1.34

Total of 4 forms are submitted.

Customer No. 20575

Respectfully submitted,
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ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF CONFERENCE

The combination of references does not teach the invention as claimed.

In the Office Action dated November 30, 2006, the Examiner added a new reference to the combination (Ohlsson), but the combination still does not teach the invention as claimed.

Claims 1, 9, and 15, have similar limitations that are not taught by the combination of references. For example, claim 1 requires *a burst path for transmitting data received from the source at a burst rate higher than the regular rate before playout at the client distinct from the regular path at least in part*. Blackard does not teach, nor does it need, a burst path. See Figure 2 of Blackard. Schuster teaches a switch to allow selection of a path from multiple paths, see Figure 2 of Schuster, item 12, "Transmitter."

The newly added reference, Ohlsson does not teach ‘a burst path for transmitting data received from a source at a burst rate higher than the regular rate...’ Ohlsson is directed to managing the size of a jitter buffer. In Ohlsson, the jitter buffer 10 stores incoming data packets. When the number of incoming data packets gets too high, a change indicator reaches an indicator roof parameter and the size of the jitter buffer is changed. See col. 7, lines 28-51.

The Office Action of November 30 cites col. 5, lines 53-67. However, this text merely recites that the application queries the buffer, and if no packet is given to the application, the application does not do anything. If a packet is given to the application, the application processes it. It may be that the Examiner has confused the application query to the buffer as being a burst path. The text references recites, “After the release time has passed, the buffer gives the first data packet to the application the next time the application sends a short-interval or ‘fast’ query to the jitter buffer...” However, this fast query is from the application to the jitter buffer, not a burst from the jitter buffer to the application. Even if there were a burst of data from the jitter buffer to the application, it would still be along the same path. There is only one path in Ohlsson.

Further, the Examiner has drawn an analogy between a receiving node jitter buffer transmitting data to an application, while the invention as claimed is directed to a transmitter server transmitting data ‘over a network.’ Transmission between a jitter buffer and a processor at a receiving node is entirely different.

The claims also require *a second buffer in the burst path for buffering data from the source prior to transmission to the client, and for transmitting the buffered data to the client at the burst rate before playout at the client.* Ohlsson does not teach first and second buffers in two different paths. The second buffer contained in the receiving node of Ohlsson is a variance

buffer. It does not store transmission data, it stores data related to the variances between the timing parameters dealing with the size of the jitter buffer. See col. 8, lines 31-48. Ohlsson does not teach two buffers for transmission data.

The combination of references is invalid.

In the Office Action dated June 2, 2006, Schuster was relied upon to teach a burst path. Schuster is now relied upon to teach the switch. However, there is no need for a switch in Blackard, as Blackard only discloses one path.

In order for a combination of references to be valid, there must be some suggestion or motivation to combine the reference teachings. No such motivation exists in this combination. Blackard teaches a transmission protocol with a pacing feedback mechanism. Such pacing mechanism would not require or benefit from the possibility of using a different transmission path in Schuster. Further, Schuster, having the capability to select one of many available transmission paths has no need for a pacing feedback mechanism. Similarly, neither Schuster nor Blackard have any need for a second or burst transmission path, if Ohlsson were to teach such a path. Ohlsson, being directed to a receiving client, has no need or use for a pacing mechanism at transmission or is there any relevance to the ability to select one of many transmission paths. No motivation exists to combine these teachings and therefore the combination of references is invalid.

The Applicant also asserts all arguments made previously, whether or not explicitly discussed herein, to preserve the right to assert these arguments in the Appeal Brief.

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